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UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS, ADOPTED BY A UNITED NATIONS CONFERENCE OF SIXTY-TWO STATES ON APRIL 11, 1980

SEPTEMBER 21, 1983.—Convention was read the first time, and together with the accompanying papers, referred to the Committee on Foreign Relations and ordered to be printed for the use of the Senate

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LETTER OF TRANSMITTAL

THE WHITE HOUSE, *September 21, 1983.*

To the Senate of the United States:

With a view to receiving the advice and consent of the Senate to ratification, I transmit herewith the United Nations Convention on Contracts for the International Sale of Goods. This Convention was adopted on April 11, 1980, by the United Nations Conference on Contracts for the International Sale of Goods and was signed on behalf of the United States at United Nations Headquarters on August 31, 1981.

The Convention would unify the law for international sales, as our Uniform Commercial Code in Article 2 unifies the law for domestic sales.

The Convention was prepared, with the active participation of representatives of the United States, by the United Nations Commission on International Trade Law (UNCITRAL) and received the unanimous approval of this worldwide body; the Convention was then adopted, without dissent, by the United Nations Conference of sixty-two States. This unanimity attests to the broadly perceived need for the Convention and the value of its provisions.

The House of Delegates of the American Bar Association recommended in 1981 that the United States ratify the Convention, subject to a declaration permitted under Article 95 as to the grounds for applicability. I concur fully in this recommendation for the reasons set forth in the enclosed report of the Department of State.

The report of the Department of State provides a summary of the Convention and describes its approach. Worthy of emphasis is the international deference that the Convention accords to the contract made by the parties to an international sale. The parties may agree that domestic law rather than the Convention will apply, and their contract may modify or supplant the Convention's rules. The uniform international rules play their significant role when, as often occurs, a problem arises that the parties did not anticipate and solve by contract.

International trade now is subject to serious legal uncertainties. Questions often arise as to whether our law or foreign law governs the transaction, and our traders and their counsel find it difficult to evaluate and answer claims based on one or another of the many unfamiliar foreign legal systems. The Convention's uniform rules offer effective answers to these problems.

Enhancing legal certainty for international sales contracts will serve the interests of all parties engaged in commerce by facilitating international trade. I recommend that the Senate of the United States promptly give its advice and consent to the ratification of this Convention.

RONALD REAGAN.

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, August 30, 1983.

The PRESIDENT,
The White House.

THE PRESIDENT: I have the honor to submit to you the United Nations Convention on Contracts for the International Sale of Goods with the recommendation that it be transmitted to the Senate for its advice and consent to ratification. This Convention, adopted without dissent on April 11, 1980, by a United Nations conference of sixty-two States, culminated a half-century of work to prepare uniform law for the international sale of goods.

Sales transactions that cross international boundaries are subject to legal uncertainty—doubt as to which legal system will apply and the difficulty of coping with unfamiliar foreign law. The sales contract may specify which law will apply, but our sellers and buyers cannot expect that foreign trading partners will always agree on the applicability of United States law. Insistence by both parties on this sensitive point can prolong and jeopardize the making of the contract.

The Convention's approach provides an effective solution for this difficult problem. When a contract for an international sale of goods does not make clear what rule of law applies, the Convention provides uniform rules to govern the questions that arise in the making and performance of the contract.

The Convention does not restrict the parties' freedom to settle by contract the full range of their rights and obligations. Instead it provides that its rules yield to the terms of the international sales contract. A major need for the Convention's uniform law arises from the fact that the buyer and the seller do not anticipate every question that might arise or consider it essential to deal with every problem, and it is often inexpedient to hold up the transaction until the parties find a solution for all foreseeable contingencies. In short, the Convention (like modern national systems of commercial law) serves the significant function of providing solutions for problems that the parties have failed to resolve by contract.

The usefulness of the Convention is enhanced by the fact that its rules were specially fashioned to meet the problems and needs of international trade. Our sellers and buyers now must cope with foreign statutes and code that were prepared a century or more ago, and were designed for domestic sales that bear little resemblance to current international transactions. Even when these problems have been ameliorated by case-law, such developments are often unknown or inaccessible to our lawyers.

The present Convention was adopted in six languages; English, of course, is one. The legislative history of the Convention is readily available in English, and most of the explanatory writing about the Convention is in English. Under the Convention our traders will not be forced to rely on foreign advice concerning the implications of the rules of a wide variety of foreign legal systems and often inadequate translations of such advice or rules.

This Convention replaces the Hague Sales Convention of 1964 which, because of defects, have not been widely accepted. (The United States has neither signed nor become a party to these Conventions.) These defects were discussed and resolved during a decade of preparatory work by the United Nations Commission on International Trade Law (UNCITRAL). The thirty-six member States of UNCITRAL provided representation for all major legal systems and regions of the world. United States representatives played an active and influential part in this preparatory work and in the 1980 Conference. UNCITRAL unanimously approved the draft Convention, and the 1980 Plenipotentiary Conference of sixty-two States, again without dissent, adopted the final text.

During the eighteen-month period for signing the Convention after the 1980 Conference the following became Signatory States: Austria; Chile; Czechoslovakia; Denmark; Finland; France; German Democratic Republic; Germany, Federal Republic of; Ghana; Hungary; Italy; Lesotho; Netherlands; Norway; People's Republic of China; Poland; Singapore; Sweden; United States of America; Venezuela; and Yugoslavia. Steps for both Signatory and non-Signatory States to become parties to the Convention are now under way. Argentina, Egypt, France, Hungary, Lesotho and Syria have already ratified or acceded to the Convention, which will come into force approximately one year after four more countries have submitted their ratifications or accessions (Article 99(1)). Signature and ratification by the United States were recommended by the House of Delegates of the American Bar Association in 1981.

Enclosed is a Legal Analysis comparing the Convention's provisions with those of the Sales Article of the Uniform Commercial Code (UCC), which has been enacted by every State of the United States except Louisiana. It will be noted that the Convention embodies the substance of many of the important provisions of the UCC and is generally consistent with its approach and outlook.

For the reasons set forth in Appendix B of the Legal Analysis, I recommend that United States ratification be made subject to the declaration permitted under Article 95 that the United States will not be bound by Article 1(1)(b) of the Convention. As a result of this reservation, the Convention will be applicable only when the seller and the buyer have their places of business in different Contracting States. This limitation, also approved by the American Bar Association, provides a clear, fair and adequate basis for the applicability of the Convention.

The Convention is subject to ratification by signatory states (Article 91(2)), but is self-executing and thus requires no federal implementing legislation to come into force throughout the United States. As already indicated, the Convention's effect is limited to foreign

commerce of the United States and it will not affect purely domestic contracts of sale.

The Convention is a notable example of world-wide legal cooperation. It provides practical help for sellers and buyers, in our country and abroad, and by adding certainty to law it will facilitate international trade.

The Department of Commerce supports this recommendation and the Department of Justice has no objection to it.

It is hoped that the Senate will promptly give favorable consideration to this Convention and approve ratification by the United States.

Respectfully submitted.

GEORGE P. SHULTZ.

Legal Analysis of the United Nations Convention on Contracts for the International Sale of Goods (1980)

The Convention provides uniform rules to resolve questions that have not been answered by the contracts made by the seller and the buyer in an international sale. The salient features of the Convention were summarized in the Letter of Submittal to the President. To assist in a closer study of these rules, the present statement provides a brief synopsis of the 101 articles of the Convention.

It is not feasible in this brief analysis to provide a thorough commentary on the Convention's uniform rules of law for the sale of goods. Such a commentary calls for a substantial book; detailed studies are provided by books and articles that are listed in Appendix A.

The present document is designed to spot-light the most significant provisions of the Convention, and to indicate the relationship between these provisions and United States law as set forth in Article 2 on Sale of Goods of the Uniform Commercial Code, which has been enacted by virtually all States of the United States.

Structure of the Convention

The uniform rules for sales transactions appear in Parts I–III of the Convention. Part I (Arts. 1–13) defines the Convention's field of application and includes other general provisions. Part II (Arts. 14–24) governs formation of the contract. Part III (Arts. 25–88) governs the rights and obligations of the parties to the contract of sale. Part IV ("Final Provisions": Arts. 89–101) establishes procedures for implementing the Convention and sets out the reservations that a State may make.

Part I: Sphere of Application and General Provisions

(Articles 1–13)

Introduction to Part I of the Convention

Part I sets forth rules that apply throughout the Convention. Chapter I defines the Convention's field of application. Chapter II addresses other general questions, notably interpretation of the Convention and the sales contract.

A. The Convention's Field of Application: Chapter I

Article 1 addresses two issues that control the applicability of the Convention: (1) When is a sale "international"? and (2) What contact between the sales transaction and a Contracting State will invoke the Convention? (A "Contracting State" is a country that has become a party to the Convention.) Articles 2 and 3 exclude specified types of

commodities and transactions. Articles 4 and 5 draw the line between *issues* that are regulated and those that are excluded: the excluded issues include the validity of the contract, the effect of the contract on the ownership rights of third persons (Art. 4) and liability for death or personal injury (Art. 5). The chapter closes with a brief but important provision (Art. 6) yielding overriding effect to the contract made by the parties.

CHAPTER I. SPHERE OF APPLICATION

(Articles 1–6)

Article 1. Basic rules on Applicability

Under Article 1 the Convention will apply only if two requirements are met: (1) the seller and the buyer have their "places of business in different States," and (2) both of these States are Contracting States (i.e. States that have adopted the Convention). This simplified basis for applicability reflects a recommendation that the United States ratify subject to a declaration authorized by Article 95; the reasons for making this declaration and its effect are set forth in Appendix B. Thus, an American court would apply the Convention only to sales with an international character between parties in whose countries the Convention is in force.

Article 2. Exclusions from the Convention

Article 2 provides for six exclusions from the Convention. Three (paragraphs (a)–(c)) are based on the nature of the transaction and three (paragraphs (d)–(f)) are based on the nature of the goods.

Paragraph (a) excludes substantially all consumer purchases by language based on the Uniform Commercial Code (UCC 9–109(1)). The principal impact of the Convention is thus on commercial sales between persons in business.

The remaining five exclusions do not call for discussion in this analysis.

Article 3. Goods to be Manufactured: Services

Paragraph (1) makes it clear that a sale is not excluded from the scope of the Convention merely because it calls for the manufacture or production of goods. On the other hand, it also makes it clear that the Convention does not extend to transactions in which the party receiving a finished product supplies "a substantial part" of the necessary materials.

Paragraph (2) excludes "service" contracts, in which the "supply of labour or other services" comprises the preponderant part of the transaction.

Article 4. Issues Covered and Excluded; Validity; Effect on Property Interests of Third Persons

While Articles 1–3 identify the *contracts* that are subject to the Convention, Article 4 defines the *issues* to which the Convention applies.

Article 4 states that the Convention "governs only" the following: (1) "the formation of the contract" (Part II of the Convention) and (2) "the rights and obligations of the seller and the buyer arising from such a contract" (Part III of the Convention). In addition it excludes from the Convention issues with respect to "the validity of the contract or of any of its provisions or of any usage". One example is a rule of national law that prohibits the sale of specified products, such as heroin, and invalidates contracts relating to such illegal sales.

Article 4 also provides that the Convention "is not concerned with . . . the effect which the contract may have on the property in the goods sold". Whether the sale to the buyer cuts off outstanding property interests of third persons is not dealt with by the Convention. This specific provision illustrates the general rule of Article 4 that the Convention is concerned only with the "rights and obligations of *the seller and the buyer*" arising from the sales contract. For the buyer's right, *as against the seller*, to receive good title, see Articles 41–43, *infra*.

Article 5. Exclusion of Liability for Death or Personal Injury; "Product Liability"

Article 5 makes the Convention inapplicable to the liability of the seller for death or personal injury caused by the goods. This was done lest the Convention collide with rules of national law on product liability.

Article 6. The Contract and the Convention

The dominant theme of the Convention is the primacy of the contract. See, *e.g.*, Arts. 4 and 35. Of the many provisions that develop this theme, Article 6 is the most important. Thus, the parties may exclude the Convention or "vary the effect" of any of its provisions. The breadth of the parties' freedom to contract is emphasized by the one exception stated in Article 6—the privilege of an adhering State under Articles 12 and 96 to preserve its domestic rules that require a writing. (See Art. 12, *infra*).

CHAPTER II. GENERAL PROVISIONS

(Articles 7–13)

Article 7. Interpretation of the Convention

A. International Character; Uniformity; Good Faith

Paragraph (1) provides that in interpreting the Convention there shall be regard for two closely-related principles—(a) the Convention's "international character" and (b) "the need to promote uniformity in its application." The latter provision is usual in uniform legislation in the United States. *See* UCC 1–102(2)(c). Paragraph (1) also provides that in interpreting the Convention there shall be regard for promoting "the observance of good faith in international trade." The Uniform Commercial Code states a "good faith" requirement that is broader than the principle of interpretation stated in the Convention. *See* UCC 1–203: "Every contract or duty within this

Act impose a duty of good faith in its performance or enforcement." See also: UCC 2–103(1)(b).

B. "General Principles"

Paragraph (2) provides that, where possible, questions "are to be settled in conformity with the general principles on which [the Convention] is based"—an approach that was designed to strengthen uniform international interpretation of the Convention. A somewhat similar principle is expressed in the Uniform Commercial Code. For example, section 1–102(1) states that the UCC is to be "liberally construed and applied to promote its *underlying purposes and policies.*"

Article 8. Interpretation of Statements or Other Conduct of a Party

While Article 7 deals with interpretation of the *Convention*, the present Article deals with the interpretation of the statements and conduct of the *parties*, including the provisions of the contract of sale. When there is no common "intent" of the parties, Articles 8(2) applies the objective standard familiar to the common law.

Article 8(3) authorizes "due consideration" of conduct subsequent to the agreement as this may shed light on the intentions and expectations of the parties. Similarly, the Uniform Commercial Code states that in some circumstances a "course of performance accepted or acquiesced in without objection shall be relevant to determine the meaning of the agreement" (UCC 2–208). See also UCC 2–207(3) under which "conduct by both parties which recognizes the existence of a contract is sufficient to establish a contract for sale . . ."

Article 9. Practices of the Parties; Trade Usages

One of the important features of the Convention is the legal effect it gives to practices of the parties and to commercial usages.

(1) Practices Established Between the Two Parties

Expectations that have the force of contract can be established by the parties' patterns of behavior. Under Article 9(1) the parties are bound by the "practices which they have established between themselves." The Uniform Commercial Code also gives contractual effect to the "course of dealing between parties"—defined as "a sequence of previous conduct between the parties to a particular transaction which is fairly to be regarded as establishing a common basis of understanding for interpreting their expressions and other conduct." (UCC 1–205)

(2) Usages of Trade

Article 9(2) provides that the agreement embraces a party's expectation that the other party will observe the usages of their trade. Unless the parties have agreed otherwise, effect is given to a trade usage "of which the parties knew or ought to have known" and which "in international trade is widely known to, and regularly observed by, parties to contracts of the type involved in the particular trade concerned." The Uniform Commercial Code also gives contractual effect to a "usage of trade"—defined as "any practice or method of dealing having such regularity of observance in a place, vocation or trade as

to justify an expectation that it will be observed with respect to the transaction in question." (UCC 1–205)

Under Article 6, "The parties may . . . derogate from or vary the effect" of the provisions of the Convention, and applicable usage has the same effect as a provision of a sales contract. In short, the provisions of the Convention yield to the expectations of the parties, whether derived from express contract terms, from their established practices or from applicable trade usage.

Article 10. Definition of "Place of Business"

The Convention refers to a party's "place of business" in several articles: 1, 12, 20(2), 24, 31(c), 42(1)(b), 57(1)(a), 69(2) and 96. If a commercial enterprise maintains a central office and one or more branch offices, Article 10 makes applicable the place of business "which has the closest relationship to the contract and its performance. . . ."

Article 11. Inapplicability of Domestic Requirement that Contract be in Writing

A. Domestic Rules: "Statutes of Frauds"

In 1677 the English Parliament (29 Car. II, c.3) enacted a Statute of Frauds which required a signed writing for the enforcement of a wide variety of transactions, including the sale of goods. This requirement was embodied in the United Kingdom's Sale of Goods Act (1893), was closely followed in the (U.S.A.) Uniform Sales Act (1896), and former the basis for an elaborate statute of frauds included in the Uniform Commercial Code (§ 2–201). In recent decades, however, the tide has been running against such formal requirements. In 1954 Britain repealed this part of the Sale of Goods Act—a step that has been followed by many of the other countries that had adopted this Act. Most civil law countries do not impose such formal requirements for the making of commercial contracts. Formal requirements have generated litigation and uncertainty, and are generally regarded to be of doubtful value for international trade.

B. The Convention

The 1980 Convention rejects such formal requirements (Article 11). This does not, however, bar the parties from imposing formal requirements. An offeror may require that an acceptance be in writing; an oral "acceptance" is not an "assent" to the offer. (See Arts. 18 and 19, *infra.*) In addition, pursuant to Article 29, *infra*, the parties by a contract in writing may require "any modification or termination by agreement" to be in writing.

A Contracting State may protect its formal requirements from Article 11 by making a reservation under Article 96. *See* Article 12, *infra.*

Article 12. Declaration by Contracting State Preserving Its Domestic Requirements as to Form

Laws of the U.S.S.R. impose strict formal requirements for the making of foreign trade contracts. In the UNCITRAL proceedings, delegates of the U.S.S.R. indicated that preserving these requirements was of great importance to protect its established patterns for the

making of foreign trade contracts. Most delegates, however, including the United States, concluded that formal requirements were inconsistent with modern commercial practice—particularly in view of the speed and informality that characterized many transactions in a market economy.

The result was a compromise. In Part IV (Final Provisions), Article 96 authorizes a Contracting State "whose legislation requires contracts of sale to be concluded in or evidenced by writing" to make a "declaration" that Article 11 (and certain other provisions of the Convention affecting formal requirements) "does not apply where any party has his place of business in that State." Article 12 articulates the effect of a declaration under Article 96. A declaration (reservation) under Article 96 would not ensure that the formal requirements of the declaring State would apply to transactions involving its buyers and sellers. Such applicability would result only when conflicts rules point to the formal requirements of the declaring State. However, conflicts rules may point to foreign law, which may have no formal requirements or may impose formal requirements that are unfamiliar to traders in the declaring State. These considerations explain why it is not recommended that the United States make a declaration pursuant to Article 96.

Article 13. Telegram and Telex as a "Writing"

This provision does not call for discussion.

Part II: Formation of the Contract

(Articles 14–24)

Introduction to Part II of the Convention

A. Relation Between Part II and other Parts of the Convention

Part II of the Convention, Formation of the Contract, is subject to the rules of Part I (Arts. 1–13) on the scope and interpretation of the Convention, but is independent of Part III (Arts. 25–88) which deals with the obligations of the parties to the contract. Article 92 (Part IV) permits a Contracting State to declare that it will not be bound either by Part II or by Part III.

B. Structure of Part II

The first four articles (14–17) deal with the offer—the minimum criteria for an offer (Art. 14), and the withdrawal (Art. 15), revocation (Art. 16) or termination (Art. 17) of an offer. The next five articles (18–22) deal with acceptance—"acceptances" that do not match the offer (Art. 19), the period allowed for acceptance (Arts. 20 and 21), and withdrawal of an acceptance (Art. 22). The two final articles (Arts. 23 and 24) relate to the time when a contract is concluded.

Article 14. Criteria for an Offer

(1) "Public Offers"

Article 14 incorporates the generally accepted premise that a person may make an offer to as large a group as he wishes. However, a com-

munication addressed to a large group, if construed as an offer, can involve practical difficulties and hazards. These practical considerations are reflected in Article 14(2): If a proposal is not "addressed to *one or more specific persons*," it is not an offer "unless the contrary is clearly indicated by the person making the proposal." See Restatement Second of Contracts § 29.

(*2*) *Definiteness: Unstated Price*

Difficult problems arise when the parties neither fix the price, expressly or implicitly, nor agree on a method for fixing the price. The Convention's solution calls for construing Article 14(1) in the light of Article 55, which states that in the above circumstances the parties are considered, in the absence of any indication to the contrary, to have impliedly made reference to the price generally charged for such goods at the time of the conclusion of the contract. The Uniform Commercial Code (§ 2–305) similarly provides that the parties "if they so intend can conclude a contract for sale even though the price is not settled."

Article 15. When Offer Becomes Effective; Prior Withdrawal

Under Article 15 an offeror may withdraw an offer by a communication that reaches the offeree ahead of the offer. The reason supporting Article 15 is that the enforcement of contracts is designed to protect expectations; none can arise until the offer reaches the offeree. *Cf.* Article 18(2), *infra.*

Article 16. Revocability of Offer

Article 16 limits the powers of an offeror to revoke an offer which the offeror has stated or indicated will be "firm" or irrevocable, or on which the offeree has reasonably relied. Compare the provisions giving effect to "firm" offers in the Uniform Commercial Code (UCC 2–205). See Restatement Second of Contracts § 87 and Illustration 6.

Article 17. Rejection of Offer Followed by Acceptance

Under Article 17, an offeree may not accept an offer which he has rejected. The same rule is applied in the United States. See Restatement Second of Contracts § 38.

Article 18. Acceptance: Time and Manner for Indicating Assent

Article 18 states how an offer may be accepted. Its most significant provision is in paragraph (3): under some circumstances, an offeree may accept an offer by performing an act requested by the offeror, such as dispatch of the goods. For a similar rule see Section 2–206(1)(b) of the Uniform Commercial Code.

Article 19. "Acceptance" With Modifications

Article 19 faces the situation in which a reply to an offer purports to be an acceptance but contains modifications of the offer. This situation most commonly results from the routine exchange of the buyer's printed purchase order and the seller's printed acknowledgement of

sale form. Under the Convention, no contract results from such an exchange if the purported acceptance contains additional or different terms that materially alter the offer. A list of examples of material alterations makes it clear that most alterations are material. However, an acceptance with an immaterial modification will be effective unless the offeror objects.

The Convention's approach to this difficult problem differs from that of the Uniform Commercial Code, under which even a material alteration may not prevent the purported acceptance from creating a contract (UCC 2–207). The Convention would thus avoid many of the problems that have arisen under and resulted in criticism of the Code provision.

Articles 20–24

The following articles dealing with various aspects of acceptance do not call for discussion:

Article 20. Interpretation of Offeror's Time-Limits for Acceptance

Article 21. Late Acceptances: Response by Offeror

Article 22. Withdrawal of Acceptance

Article 23. Effect of Acceptance; Time of Conclusion of Contracts

Article 24. When Communication "Reaches" the Addressee

These articles complete Part II: Formation of Contract.

Part III: Sale of Goods

(Articles 25–88)

INTRODUCTION TO PART III OF THE CONVENTION

When an enforceable international sales contract has been formed, Part III governs the rights and obligations of the seller and buyer.

Part III has five chapters. Chapter I (Arts. 25–29) contains general provisions that are applicable throughout Part III of the Convention. Chapter II (Arts. 30–52) deals with the obligations of the seller (Secs. I & II) and remedies for the seller's breach (Sec. III). Chapter III (Arts. 53–65), paralleling the structure of Chapter II, states the obligations of the buyer (Secs. I and II) and remedies for the buyer's breach (Sec. III). Chapter IV (Arts. 66–70) is devoted to risk of loss. Chapter V (Arts. 71–88) addresses anticipatory breach (Sec. I), damage measurement and interest (Secs. II & III), excuses ("exemptions") based on serious impediments (Sec. IV), effects of avoidance (Sec. V), and duties to preserve goods that face loss or deterioration (Sec. VI).

(Articles 25–29)

Article 25. Definition of "Fundamental Breach"

A. Introduction

The breach of a sales contract by one party gives the other party a right to recover damages, but Article 25 relates to other remedies—the buyer s right to reject goods and the seller's right to refuse to deliver. In domestic law these remedies may be called "rejection", "revocation of acceptance", "avoidance", "termination" or "cancellation". In the Convention (Arts. 49 & 64) a party's privilege not to perform the contract because of the other party's breach is called "avoidance of the contract."

In the Convention, as in our legal system, "avoidance" is not available for every breach. Under Articles 49(1)(a) and 64(1)(a), *infra*, a party may avoid the contract when the other party commits a "fundamental breach"—a term that is defined in Article 25.

The role played by "fundamental breach" under the Convention is similar to that played by Section 2–608 of the Uniform Commercial Code, under which a buyer who has accepted goods that turn out to be defective may revoke his acceptance if the non-conforimty "*substantially* impairs" the value of the goods to him (UCC 2–612, but *cf.* 2–601). The UCC does not attempt to define "substantial" impairment. The Convention's definition of "fundamental breach" also allows leeway to consider whether avoidance is needed to assure full protection for the aggrieved party.

Article 26. Notice of Avoidance

Article 26 provides that a "declaration of avoidance of the contract is effective only if made by notice to the other party". This is one of the significant advances of the 1980 Convention over the 1968 Hague Convention on Sales (ULIS).

At various points ULIS gave an injured party a remedy called "*ipso facto* avoidance". This type of avoidance occurred automatically with no need to notify the other party (ULIS 25, 26(1)). Consequently, the other party might be led to perform in ignorance of the injured party's decision to refuse performance. At the 1964 Hague Conference the delegations of the United States and other states attempted unsuccessfully to eliminate *ipso facto* avoidance.

In the UNCITRAL proceedings, the delegations of the United States and other countries were able to remove the doctrine of *ipso facto* avoidance, resulting in the simple rule of Article 26. Requiring that notice be given of a remedy as drastic as avoidance is consistent with the Uniform Commercial Code. See UCC 2–602(1) (notice of rejection), 2–608(2) (notice of revocation of acceptance).

Article 27. Delay or Error in Communications

Under Article 26, *supra*, avoidance of a contract is effected "by notice" and in other settings communications have important consequences. *E.g.* Arts. 39(1) (notice of lack of conformity) and 43 (notice of right or claim of third party). Article 27 addresses the problems that arise when a notice is sent but, because of a mishap in transmission, is delayed, garbled or lost. Article 27 lays down the general rule that a party satisfies his duty to notify if he dispatches the communication "by means appropriate in the circumstances."

This general rule is subject to exceptions in Articles 47(2), 48(4), 63(2), 65(1) & (2) and 79(4). Nearly all of these exceptions involve a communication by a party who is in breach of contract; the "receipt" principle was used so that a mishap in transmission would not add to the burdens of the aggrieved party.

The Uniform Commercial Code similarly requires the buyer to "notify" the seller of breach or "be barred from any remedy", and provides that one "notifies" another "*by taking such steps* as may be reasonably required to inform the other in ordinary course whether or not such other actually comes to know of it" (UCC 2–607(3) and 1–201(26)). The UCC, like the Convention, states exceptions from this general rule (e.g. § 2–616).

Article 28. Specific Performance and the Rules of the Forum

The Convention's system of remedies for breach of contract is based on the premise that a party in breach may be compelled to perform his obligations. On the other hand, restrictions on the right to specific performance appear in Articles 46(2) and 46(3).

Even with the restrictions just mentioned, the Convention grants specific performance on a wider scale than does the common law. As a concession to the common law, Article 28 provides that rules of national law withholding specific performance will prevail over the rules of the Convention. Thus, courts in the United States would still be subject to the limits on such remedies provided in Section 2–716 of the Uniform Commercial Code. *Cf.* UCC 2–709.

Article 29. Modification of Contract; Requirement of a Writing

Sales contracts sometimes provide that they may be modified only in writing. Article 29 gives effect to these private "statutes of frauds". The Uniform Commercial Code is similar (UCC 2–209(2)).

CHAPTER II. OBLIGATIONS OF THE SELLER

(Articles 30–52)

Introduction to Chapter II

Chapter II opens with a brief statement giving the essence of the seller's obligations (Art. 30). The remaining articles of the Chapter are grouped in three sections. Two sections define the seller's most

important duties: The time and place for delivering the goods (Sec. I, Arts. 31–34); the quality of the goods and their freedom from third party claims (Sec. II, Arts. 35–44). The final section sets forth the basic remedies that are given to the buyer when the seller fails to perform his duties under the contract (Sec. III, Arts. 45–52).

The brief summary of Chapter II in Article 30 does not call for further discussion.

SECTION I: DELIVERY OF THE GOODS AND HANDING OVER THE DOCUMENTS

(Articles 31–34)

Article 31. Place for Delivery

When the contract, interpreted in the light of practices and usages, does not state where the seller should deliver the goods, the place of delivery is determined by Article 31. See also the Convention's rules on risk of loss in Article 67 and 69, *Infra.*

Article 32. Shipping Arrangement

In international sales, the seller usually completes his obligation to deliver by "handing over the goods to the first carrier for transmission to the buyer." Art. 31, *supra*, and Article 67, *infra*. However, the seller also normally makes various arrangements with respect to carriage. Any provision of the sales contract (including usage and any practice between the parties) is decisive as to the seller's obligations in this regard; to the extent that there is no agreement with respect to shipping arrangements. Article 32 fills the gap.

Paragraph (1), requiring the seller to notify the buyer of the shipment, is similar to Section 2–504(c) of the Uniform Commercial Code. Paragraph (2), dealing with transportation arrangements, is similar to UCC 2–504. Paragraph (3) calls for cooperation between the parties with respect to supplying needed information concerning insurance. Similar rules on co-operation are set forth in the Uniform Commercial Code (2–311, 2–319(1)(c) and 2–319(3)).

Article 33. Time for Delivery

This article does not call for discussion.

Article 34. Documents relating to the Goods

Article 34 responds to commercial practice in international sales that permits, and often requires, delivery of the goods to be effected by handing over documents (such as a bill of lading) that control the goods. Accord: UCC 2–310(b). *Cf.* UCC 2–505 and 2–507(2).

Article 34 also provides that the seller's right to "cure" a defective delivery of goods (Art. 37, *infra*) extend to the delivery of documents. The Uniform Commercial Code provides that a seller may cure a "tender or delivery," which may include the tender of documents (2–508(1); 2–504(b)).

SECTION II. CONFORMITY OF THE GOODS AND THE THIRD PARTY CLAIMS

(Articles 35–44)

Introduction to Section II

Articles 35 and 36 define the seller's obligations with respect to the quality of the goods. Articles 37–40 describe procedures that apply when goods are defective—the seller's privilege to cure defects in the goods (Art. 37) and the buyer's obligation to examine the goods and notify the seller of nonconformity (Arts. 38–40). Articles 41 and 42 define the rights of the buyer when the goods are subject to third party claims of ownership (Art. 41) and of rights based on patents, trademarks or other types of intellectual property (Art. 42). Article 43 requires the buyer to notify the seller of these claims; the concluding article (Art. 44) gives grounds for excusing a failure to notify the seller.

Article 35. Conformity of the Goods

Paragraph (1) of Article 35 emphasizes that the seller must supply goods of the quality provided in the contract. As mentioned earlier (Art. 9, *supra*) under the Convention the practices established by the parties and applicable trade usages help to determine the contractual obligations of the parties. Accord: UCC 1–205. The Uniform Commercial Code also emphasizes the importance of the contract. (UCC 2–313).

Paragraph (2) of Article 35, like Sections 2–314 and 2–315 of the Uniform Commercial Code, gives effect to the buyer's basic expectations of quality. Paragraph 2(a), on fitness of goods for "the purposes for which goods of the same *description* would *ordinarily* be used," is similar to UCC–2–314(2)(c). Paragraph 2(b), on fitness for a particular purpose, is similar to UCC 2–315. Paragraph (2)(c), on conformity with a sample or model, is similar to UCC 2–313(1)(c). Paragraph (2)(d), on packaging, is similar to UCC 2–314(2)(e). Paragraph (3), on the effect of the buyer's knowledge of a lack of conformity, is comparable to UCC 2–316(3)(b).

Article 36. Damage to Goods: Effect on Conformity

Goods often arrive in poor condition because of damage that occurred after the risk of loss passed to the buyer. Paragraph (1) of Article 36 makes it clear that the seller is not responsible for defects that result from transit casualties which the buyer has assumed under the contract or under the Convention's rules on risk of loss (Arts. 66–70, *infra*). Paragraph (2) deals with the effect of contractual guarantees that goods will retain a specified quality for a prescribed period of time.

Article 37. Right to Cure Up to the Date for Delivery

Under Article 37 the seller, up to the agreed date for delivery, may remedy defects in the goods and thereby prevent destruction of the contract by "avoidance"—the remedy that in U.S. law is termed "rejec-

tion" (UCC 2–601) or "revocation of acceptance" (UCC 2–608). The "cure" provisions of Article 37 closely resemble those of UCC 2-508(1). *Cf.* Art. 48, *infra*, and UCC 2–508(2).

Article 38. Time for Examining the Goods

Article 38 provides rules on how soon the buyer "must examine" the goods. These rules are given legal effect by Article 39(1), which cuts off the buyer's rights if he fails to notify the seller of a non-conformity within a reasonable time after he "ought to have discovered" it. The rules on inspection and notice in Articles 38 and 39(1) are similar to the notice requirement in UCC 2–607(3)).

Article 39. Notice of Lack of Conformity

Article 40. Seller's Knowledge of Non-Conformity

Article 44. Excuse for Failure to Notify

As was mentioned under Article 38, the notice requirement of Article 39(1) is similar to that of UCC 2–607(3). However, Article 39(2) sets an outer limit for notice of two years unless the parties agree otherwise; the UCC states no fixed outer limit for notification. *Cf.* UCC 2–725 (limitation period for actions of four years after delivery). On the other hand, the Uniform Commercial Code extends to claims, including those for personal injury arising out of consumer purchases, where substantial delays in notification may be justified. As we have already seen, the Convention excludes substantially all consumer transactions (Art. 2(a)) and excludes all claims for death or personal injury (Art. 5). Article 44 of the Convention relaxes the notice requirement of Articles 39(1) and 43(1) to the extent of allowing the buyer to reduce the price (Art. 50) "or claim damages, except for loss of profit" when the buyer "has a reasonable excuse for his failure to give the required notice." This provision, however, does not remove the two-year outer limit for notification set by Article 39(2) or authorize a buyer, who has failed to give notice within a reasonable time, to exercise other remedies such as avoidance of the contract (Art. 49, *cf.* Art. 46).

Article 41. Third-Party Ownership Claims to Goods

Article 42. Third-Party Claims Based on Patent or Other Intellectual Property

Article 43. Notice of Claim

One of the limits on the scope of the Convention is set by Article 4: "this Convention . . . is not concerned with . . . (b) the effect which the contract may have on the property in the goods sold". Thus, if a third person claims the goods because of a defect in the seller's title, the question whether the buyer is protected, as a good faith purchaser, against that third-party claim is not governed by the Convention but is left to applicable domestic law.

Article 41 addresses this question: When the seller supplies goods that are subject to a third-party claim, what are the rights of the buyer *against the seller*? Third-party claims "based on industrial property or other intellectual property" (e.g., a patent or copyright) are dealt with in Article 42.

The protection afforded the buyer under Article 41 is similar to the implied warranty of title provided by the Uniform Commercial Code (UCC 2–312(1)). The Code gives the buyer rights against the seller when a third person establishes a claim "by way of infringement or the like" (UCC 2–312(3)), but does not deal with the problems that arise when the buyer encounters an infringement claim in a country where the seller could not have anticipated that the goods would be used or resold. These problems are addressed in Article 42.

The notice provisions of Article 43 do not call for discussion here. *Cf.* Articles 39, 40 and 44, *supra*. (Article 43 does not set a fixed cut-off period for notice comparable to the two-year period in Article 39(2)).

SECTION III. REMEDIES FOR BREACH OF CONTRACT BY THE SELLER

(Articles 45–52)

Introduction to Section III

A. A Bird's-Eye View of the Section

The first two sections of Chapter II define the seller's duties; Section III defines the buyer's remedies when the seller is in breach.

Section III opens (Art. 45) with a general overview of the remedial system and indicates the relationship of different remedies to each other. *Cf.* UCC 2–711, 2–720. Article 46 states the buyer's right to compel performance by the seller. See Art. 28, *supra*, and UCC 2–716.

Three articles (Arts. 47–49) address the buyer's right to "avoid" the contract, a concept that includes the rejection of goods. *Cf.* UCC 2–601, 2–608. Article 47 empowers the buyer to fix an additional final period for the seller's delivery of the goods—a step that clarifies the buyer's right to avoid the contract for delay in delivery. Article 48 empowers the seller to "cure" defects in performance and thus forestall avoidance of the contract. *Cf.* UCC 2–508. Article 49 states the grounds on which the buyer may avoid the contract. *Cf.* UCC 2–608.

The section closes with three articles dealing with special situations—the buyer's right to reduce the price (Art. 50), the applicability of remedies to only part of the goods (Art. 51; *cf.* UCC 2–601)(c), 2–608(1)) and deliveries that are too early or excessive in quantity (Art. 52; *cf.* UCC 2–601(c)). Although the remedy in Article 50 (reduction of price) has its origin in civil law concepts, its formula has been amended so as to approximate the common law right to deduct damages from the price (*Cf.* UCC 2–717).

B. Relationship to Other Parts of the Convention

Section III of the present chapter provides remedies that apply only to breach by the seller; Section III of Chapter III provides comparable remedies for breach by the buyer. These two sections are supplemented by remedial provisions in Chapter V that apply to both parties—*e.g.*, anticipatory breach (Sec. I), the measurement of dam-

ages, and interest (Secs. II and III), "exemption" from damages (Sec. IV) and the effects of avoidance of the contract (Sec. V).

C. General Comment

It is not feasible for this legal analysis to analyze in detail the remedial provisions of Articles 45–52. It must suffice to note that, with the encouragement of the United States delegation, UNCITRAL reviewed the 1964 Hague Convention (ULIS), unified and simplified its complex provisions, and thereby met the serious objections of the United States delegation to the 1964 Hague Conference.

CHAPTER III: OBLIGATIONS OF THE BUYER

(Articles 53–65)

Introduction to Chapter III

The structure of Chapter III is similar to that of the preceding chapter on Obligations of the Seller. Two sections state the buyer's duties: to pay the price (Sec. I, Arts. 53–59; *cf.* UCC 2–310(a), 2–507 (1)) and to take delivery (Sec. II, Art. 60). The final section defines the remedies that are available to the seller when the buyer fails to perform these duties (Sec. III, Arts. 61–65; *cf.* UCC 2–703). These remedial provisions (like those in Chapter II) are supplemented by general rules on remedies in Chapter V (Arts. 71–88).

Many of the provisions of this chapter on the obligations of the buyer are mirror-images of provisions in the preceding chapter on the obligations of the seller.

CHAPTER IV: PASSING OF RISK

(Articles 66–70)

Introduction to Chapter IV

Casualty to the goods (*e.g.* by theft or fire) may occur in various settings—while the seller holds the goods before delivering them to a carrier or to the buyer, while the goods are in transit, while the buyer is examining the goods, or while the buyer holds the goods after rejecting them. Usually the loss will be covered by insurance. Allocating the risk of loss between seller and buyer should reflect considerations such as these: Which party is in a better position to evaluate the loss and press a claim against the insurer and to salvage or dispose of damaged goods? Who can insure the goods at the least cost? Who is more likely to carry insurance under standard commercial practice? What rules on risk will minimize litigation over negligence in the care and custody of the goods?

The United States delegates to the 1964 Hague Conference on Sales reported their disappointment that risk of loss was governed by concepts that were so abstract that results were unpredictable and unresponsive to commercial needs. In UNCITRAL, on the initiative of the United States and other delegations, these objections were met by a thorough overhaul of these rules. As a result, the 1980 Convention

speaks of physical acts of transfers of possession—the "handing over" of the goods to a carrier or to the buyer.

Article 67 deals with the important issue of risk of loss in transit. When the contract (including the parties' established practices—Art. 9) does not solve this problem, the Convention, like the Uniform Commercial Code, provides the general rule that risk passes to the buyer when the goods are handed over to the carrier. Article 67 also echoes the Code in providing that the seller's retention of "documents controlling the disposition of the goods does not affect the passage of the risk." (See UCC 2–509(1)(a)).

Article 68 deals with contracts for the sale of goods that are already in transit when the contract is made, and provides that risk passes at the making of the contract unless the parties otherwise agree or the circumstances indicate an earlier time. The Uniform Commercial Code does not address this problem.

Article 69 deals, among other matters, with non-transit situations, and makes risk pass to the buyer ' when he takes over the goods"—an approach that is similar to UCC 2–509(3). Finally, Articles 69(1) and 70 deal with the effect of breach of contract on risk; in both approach and result these articles are similar to the Uniform Commercial Code (UCC 2–510).

CHAPTER V. PROVISIONS COMMON TO THE OBLIGATIONS OF THE SELLER AND OF THE BUYER

(Articles 71–88)

This concluding chapter addresses special problems with respect to remedies for breach of contract. Section I, Anticipatory Breach and Installment Contracts (Arts. 71–73), is concerned primarily with protection against impending failure of counter-performance; a party who faces this problem may, in some circumstances, suspend performance (Art. 71; *cf.* UCC 2–609, 2–705) or avoid the contract (Art. 72; *cf.* UCC 2–610). Article 73 deals with similar problems that arise in contracts for the delivery of goods by installments (*Cf.* UCC 2–612). Section II (Arts. 74–77) provides rules for measuring damages. (*Cf.* UCC 2–706—2–710, 2–712 to 2–715, 2–723). Section III consists of a brief provision Art. 78) allowing the recovery of interest on sums in arrears. Section IV, exemptions (Arts. 79–80), confronts the difficult question of excuse from liability when performance is prevented by an impediment (*e.g., force majeure*). (*Cf.* UCC 2–613, 2–615). Section V, Effects of Avoidance (Arts. 81–84), includes provisions on the restitution of benefits received under a contract that has been avoided. (*Cf.* UCC 2–711 (1) & (3)). Section VI, Preservation of the Goods (Arts. 85–88), is designed to prevent the waste or deterioration of goods that have been rejected. (*Cf.* UCC 2–602(2)(b), 2–603, 2–604).

Part IV. Final Provisions

(Articles 89–101)

A. Introduction

Many of these provisions are ministerial. Articles 89 and 91 are administrative provisions commonly included in United Nations conventions. Article 90 deals with the relationship between the 1980 Conven-

tion and any other convention that "contains provisions concerning the matters governed by" the 1980 Convention. The most significant provisions in this part deal with permitted reservations and the Convention's entry into force.

(*1*) "*Declarations*" (*Reservations*)

Articles 92–96 specify those "declarations" (reservations) that may be made by Contracting States to modify their obligations under the Convention.

Article 92 permits a Contracting State to declare that it will not be bound by Part II (Formation of the Contract) or by Part III (Obligations of the Parties under a Contract of Sale). At the 1964 Hague Conference, contrary to the position urged by the United States, separate conventions were adopted on formation of the sales contract and on obligations under the contract. In UNCITRAL, the United States position was accepted. Because of the relationship between Parts II and III, it seems advisable for the United States to ratify the entire Convention without a declaration under Article 92.

Article 93 is designed to permit a declaration (reservation) by a Contracting State with a constitutional system different from the United States (e.g. Canada) that embraces territorial units in which "different systems of law are applicable in relation to the matters dealt with" in the Convention. As already indicated, the Convention applies only to international sales. In view of the Constitutional power of the United States federal government over foreign commerce (Constitution Art. I § 8) and the treaty power (Constitution Art. II § 2; Art. VI), a declaration by the United States pursuant to Article 93 would be unnecessary and inappropriate. In the absence of a United States declaration, the Convention will extend to all territories under the jurisdiction of the United States.

Article 94 seeks to meet the needs of States joined in economic communities (e.g. Benelux) by providing for reservations by two or more Contracting States "which have the same or closely related legal rules on matters governed by" the Convention. If two or more States make declarations under Article 94, the Convention will not apply to transactions among parties in these States but will, of course, apply to transactions that run between parties in these States and parties in other states. See Article 1, *supra*. There is no need for the United States to make use of such a reservation.

Article 95 permits a Contracting State to declare that it will not be bound by Article 1(1)(b) which would make the Convention also apply "when the rules of private international law lead to the application of the law of a Contracting State." States that make this declaration would apply the Convention only when the seller and buyer have their places of business in different *Contracting* States (Art. 1(1)(a)). As noted under Article 1, *supra*, it is recommended that the United States ratify subject to this reservation; the reasons are set forth in Appendix 9 to this analysis.

Article 96 permits a declaration by a State that wishes to protect its domestic legislation that "requires contracts of sale to be concluded in or evidenced by writing", *i.e.*, a "statute of frauds". For the reasons given in the discussion of Articles 11 and 12 of the Convention, it is considered inadvisable for the United States to make use of the reservation permitted by this Article.

(2) Entry Into Force

Article 99(1) provides that the Convention enters into force on the first day of the month following the expiration of twelve months after the tenth State has consented to be bound by the Convention. Article 99(2) governs the time when the Convention enters into force with respect to States whose consent to be bound follows that of the ten initial States.

APPENDIX A

1980 U.N. CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS

Bibliography, August 1983

The following bibliography lists most English-language commentaries on the 1980 U.N. Convention on Contracts for the International Sale of Goods.

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Appendix B

Proposed United States Declaration Under Article 95 Excluding Applicability of the Convention Based on Article 1(1)(b)

Under Article 1 the Convention will apply only if two basic requirements are met: (1) The sale must be international—i.e., the seller and the buyer must have their "places of business in different states," and (2) the sale must have a prescribed relationship with one or more States that have adhered to the Convention. This statement is concerned with the second requirement—the relationship between the Convention and one or more Contracting States.

The Convention, in subparagraphs (1)(a) and (1)(b) of Article 1, states two such relationships, either of which will suffice.

(a) *First*, under subparagraph (1)(a) the Convention applies when the places of business of the seller and the buyer are in different Contracting States.

(b) *Second*, under subparagraph (1)(b) the Convention would also apply:

> (b) when the rules of private international law lead to the application of the law of a Contracting State.

At the 1980 Diplomatic Conference, delegates of the United States and several other countries proposed the deletion of the second of these grounds for applicability—subparagraphs (1)(b) of Article 1. This proposal was defeated; as a compromise, the Convention's Final Provisions (Part IV) provide in Article 95 that a Contracting State may, by reservation, declare "that it will not be bound by subparagraph (1)(b) or article 1".

The United States, in signing the Convention, stated that ratification subject to the Article 95 reservation was contemplated. This position, recommended by the American Bar Association, will promote maximum clarity in the rules governing the applicability of the Convention. The rules of private international law, on which applicability under subparagraph (1)(b) depends, are subject to uncertainty and international disharmony. On the other hand, applicability based on subparagraph (1)(a) is determined by a clear-cut test: whether the seller and buyer have their places of business in different Contracting States.

A further reason for excluding applicability based on subparagraph (1)(b) is that this provision would displace our own domestic law more frequently than foreign law. By its terms, subparagraph (1)(b) would be relevant only in sales between parties in the United States (a Contracting State) and a *non*-Contracting State. (Transactions that run between the United States and another contracting State are subject to the Convention by virtue of subparagraph (1)(a).) Under subparagraph (1)(b), when private international law points to the law of a foreign *non*-Contracting State the Convention will not

displace that foreign law, since subparagraph (1)(b) makes the Convention applicable only when "the rules of private international law lead to the application of the law of a *Contracting* State." Consequently, when those rules point to United States law, subparagraph (1)(b) would normally operate to displace United States law (the Uniform Commercial Code) and would not displace the law of foreign *non*-Contracting States.

If United States law were seriously unsuited to international transactions, there might be an advantage in displacing our law in favor of the uniform international rules provided by the Convention. However, the sales law provided by the Uniform Commercial Code is relatively modern and includes provisions that address the special problems that arise in international trade.

For these reasons it seems advisable for the United States to exclude applicability of the Convention under sub-paragraph (1)(b) by the declaration (reservation) permitted by Article 95. Fortunately, this position will not interfere with broad application of the Convention to international sales. Widespread adoption of the Convention can be anticipated; hence it is expected that eventually a substantial portion of United States international trade will involve other Contracting States and will receive the benefits of the Convention by virtue of subparagraph (1)(a) of Article 1. Moreover, parties who wish to apply the Convention to international sales contracts not covered by Article 1(1)(a) may provide by their contract that the Convention will apply.

UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS

The states parties to this Convention:

Bearing in mind the broad objectives in the resolutions adopted by the sixth special session of the General Assembly of the United Nations on the establishment of a New International Economic Order,

Considering that the development of international trade on the basis of equality and mutual benefit is an important element in promoting friendly relations among States,

Being of the Opinion that the adoption of uniform rules which govern contracts for the international sale of goods and take into account the different social, economic and legal systems would contribute to the removal of legal barriers in international trade and promote the development of international trade,

Have agreed as follows:

PART I—SPHERE OF APPLICATION AND GENERAL PROVISIONS

CHAPTER I—SPHERE OF APPLICATION

Article 1

(1) This Convention applies to contracts of sale of goods between parties whose places of business are in different States:

(a) When the States are Contracting States; or

(b) When the rules of private international law lead to the application of the law of a Contracting State.

(2) The fact that the parties have their places of business in different States is to be disregarded whenever this fact does not appear either from the contract or from any dealings between, or from information disclosed by, the parties at any time before or at the conclusion of the contract.

(3) Neither the nationality of the parties nor the civil or commercial character of the parties or of the contract is to be taken into consideration in determining the application of this Convention.

Article 2

This Convention does not apply to sales:

(a) Of goods bought for personal, family or household use, unless the seller, at any time before or at the conclusion of the contract, neither knew nor ought to have known that the goods were bought for any such use;

(b) By auction;

(c) On execution or otherwise by authority of law;

(d) Of stocks, shares, investment securities, negotiable instruments or money;

(e) Of ships, vessels, hovercraft or aircraft;

(f) Of electricity.

Article 3

(1) Contracts for the supply of goods to be manufactured or produced are to be considered sales unless the party who orders the goods undertakes to supply a substantial part of the materials necessary for such manufacture or production.

(2) This Convention does not apply to contracts in which the preponderant part of the obligations of the party who furnishes the goods consists in the supply of labour or other services.

Article 4

This Convention governs only the formation of the contract of sale and the rights and obligations of the seller and the buyer arising from such a contract. In particular, except as otherwise expressly provided in this Convention, it is not concerned with:

(a) the validity of the contract or of any of its provisions or of any usage;

(b) the effect which the contract may have on the property in the goods sold.

Article 5

This Convention does not apply to the liability of the seller for death or personal injury caused by the goods to any person.

Article 6

The parties may exclude the application of this Convention or, subject to article 12, derogate from or vary the effect of any of its provisions.

CHAPTER II—GENERAL PROVISIONS

Article 7

(1) In the interpretation of this Convention, regard is to be had to its international character and to the need to promote uniformity in its application and the observance of good faith in international trade.

(2) Questions concerning matters governed by this Convention which are not expressly settled in it are to be settled in conformity

with the general principles on which it is based or, in the absence of such principles, in conformity with the law applicable by virtue of the rules of private international law.

Article 8

(1) For the purposes of this Convention statements made by and other conduct of a party are to be interpreted according to his intent where the other party knew or could not have been unaware what that intent was.

(2) If the preceding paragraph is not applicable, statements made by and other conduct of a party are to be interpreted according to the understanding that a reasonable person of the same kind as the other party would have had in the same circumstances.

(3) In determining the intent of a party or the understanding a reasonable person would have had, due consideration is to be given to all relevant circumstances of the case including the negotiations, any practices which the parties have established between themselves, usages and any subsequent conduct of the parties.

Article 9

(1) The parties are bound by any usage to which they have agreed and by any practices which they have established between themselves.

(2) The parties are considered, unless otherwise agreed, to have impliedly made applicable to their contract or its formation a usage of which the parties knew or ought to have known and which in international trade is widely known to, and regularly observed by, parties to contracts of the type involved in the particular trade concerned.

Article 10

For the purposes of this Convention:

(a) If a party has more than one place of business, the place of business is that which has the closest relationship to the contract and its performance, having regard to the circumstances known to or contemplated by the parties at any time before or at the conclusion of the contract;

(b) If a party does not have a place of business, references is to be made to his habitual residence.

Article 11

A contract of sale need not be concluded in or evidenced by writing and is not subject to any other requirement as to form. It may be proved by any means, including witnesses.

Article 12

Any provision of article 11, article 29 or Part II of this Convention that allows a contract of sale or its modification or termination by agreement or any offer, acceptance or other indication of intention to be made in any form other than in writing does not apply where any party has his place of business in a Contracting State which has made a declaration under article 96 of this Convention. The parties may not derogate from or vary the effect of this article.

Article 13

For the purposes of this Convention "writing" includes telegram and telex.

Part II—Formation of the Contract

Article 14

(1) A proposal for concluding a contract addressed to one or more specific persons constitutes an offer if it is sufficiently definite and indicates the intention of the offeror to be bound in case of acceptance. A proposal is sufficiently definite if it indicates the goods and expressly or implicitly fixes or makes provision for determining the quantity and the price.

(2) A proposal other than one addressed to one or more specific persons is to be considered merely as an invitation to make offers, unless the contrary is clearly indicated by the person making the proposal.

Article 15

(1) An offer becomes effective when it reaches the offeree.

(2) An offer, even if it is irrevocable, may be withdrawn if the withdrawal reaches the offeree before or at the same time as the offer.

Article 16

(1) Until a contract is concluded an offer may be revoked if the revocation reaches the offeree before he has dispatched an acceptance.

(2) However, an offer cannot be revoked:

(a) If it indicates, whether by stating a fixed time for acceptance or otherwise, that it is irrevocable; or

(b) If it was reasonable for the offeree to rely on the offer as being irrevocable and the offeree has acted in reliance on the offer.

Article 17

An offer, even if it is irrevocable, is terminated when a rejection reaches the offeror.

Article 18

(1) A statement made by or other conduct of the offeree indicating assent to an offer is an acceptance. Silence or inactivity does not in itself amount to acceptance.

(2) An acceptance of an offer becomes effective at the moment the indication of assent reaches the offeror. An acceptance is not effective if the indication of assent does not reach the offeror within the time he has fixed or, if no time is fixed, within a reasonable time, due account being taken of the circumstances of the transaction, including the rapidity of the means of communication employed by the offeror. An oral offer must be accepted immediately unless the circumstances indicate otherwise.

(3) However, if, by virtue of the offer or as a result of practices which the parties have established between themselves or of usage, the offeree may indicate assent by performing an act, such as one relating to the dispatch of the goods or payment of the price, without notice to the offeror, the acceptance is effective at the moment the act is performed, provided that the act is performed within the period of time laid down in the preceding paragraph.

Article 19

(1) A reply to an offer which purports to be an acceptance but contains additions, limitations or other modifications is a rejection of the offer and constitutes a counter-offer.

(2) However, a reply to an offer which purports to be an acceptance but contains additional or different terms which do not materially alter the terms of the offer constitutes an acceptance, unless the offeror, without undue delay, objects orally to the discrepancy or dispatches a notice to that effect. If he does not so object, the terms of the contract are the terms of the offer with the modifications contained in the acceptance.

(3) Additional or different terms relating, among other things, to the price, payment, quality and quantity of the goods, place and time of delivery, extent of one party's liability to the other or the settlement of disputes are considered to alter the terms of the offer materially.

Article 20

(1) A period of time for acceptance fixed by the offeror in a telegram or a letter begins to run from the moment the telegram is handed in for dispatch or from the date shown on the letter or, if no such date is shown, from the date shown on the envelope. A period of time for acceptance fixed by the offeror by telephone, telex or other means of instantaneous communication, begins to run from the moment that the offer reaches the offeree.

(2) Official holidays or non-business days occurring during the period for acceptance are included in calculating the period. However, if a notice of acceptance cannot be delivered at the address of the offeror on the last day of the period because that day falls on an official holiday or a non-business day at the place of business of the offeror, the period is extended until the first business day which follows.

Article 21

(1) A late acceptance is nevertheless effective as an acceptance if without delay the offeror orally so informs the offeree or dispatches a notice to that effect.

(2) If a letter or other writing containing a late acceptance shows that it has been sent in such circumstances that if its transmission had been normal it would have reached the offeror in due time, the late acceptance is effective as an acceptance unless, without delay, the offeror orally informs the offeree that he considers his offer as having lapsed or dispatches a notice to that effect.

Article 22

An acceptance may be withdrawn if the withdrawal reaches the offeror before or at the same time as the acceptance would have become effective.

Article 23

A contract is concluded at the moment when an acceptance of an offer becomes effective in accordance with the provisions of this Convention.

Article 24

For the purposes of this Part of the Convention, an offer, declaration of acceptance or any other indication of intention "reaches" the addressee when it is made orally to him or delivered by any other means to him personally, to his place of business or mailing address or, if he does not have a place of business or mailing address, to his habitual residence.

PART III—SALE OF GOODS

CHAPTER I—GENERAL PROVISIONS

Article 25

A breach of contract committed by one of the parties is fundamental if it results in such detriment to the other party as substantially to deprive him of what he is entitled to expect under the contract, unless the party in breach did not foresee and a reasonable person of the same kind in the same circumstances would not have foreseen such a result.

Article 26

A declaration of avoidance of the contract is effective only if made by notice to the other party.

Article 27

Unless otherwise expressly provided in this Part of the Convention, if any notice, request or other communication is given or made by a party in accordance with this Part and by means appropriate in the circumstances, a delay or error in the transmission of the communication or its failure to arrive does not deprive that party of the right to rely on the communication.

Article 28

If, in accordance with the provisions of this Convention, one party is entitled to require performance of any obligation by the other party, a court is not bound to enter a judgment for specific performance unless the court would do so under its own law in respect of similar contracts of sale not governed by this Convention.

Article 29

(1) A contract may be modified or terminated by the mere agreement of the parties.

(2) A contract in writing which contains a provision requiring any modification or termination by agreement to be in writing may not be otherwise modified or terminated by agreement. However, a party may be precluded by his conduct from asserting such a provision to the extent that the other party has relied on that conduct.

CHAPTER II—OBLIGATIONS OF THE SELLER

Article 30

The seller must deliver the goods, hand over any documents relating to them and transfer the property in the goods, as required by the contract and this Convention.

Section I. Delivery of the Goods and Handing Over of Documents

Article 31

If the seller is not bound to deliver the goods at any other particular place, his obligation to deliver consists:

(a) If the contract of sale involves carriage of the goods—in handing the goods over to the first carrier for transmission to the buyer;

(b) If, in cases not within the preceding subparagraph, the contract relates to specific goods, or unidentified goods to be drawn from

a specific stock or to be manufactured or produced, and at the time of the conclusion of the contract the parties knew that the goods were at, or were to be manufactured or produced at, a particular place—in placing the goods at the buyer's disposal at that place;

(c) In other cases—in placing the goods at the buyer's disposal at the place where the seller had his place of business at the time of the conclusion of the contract.

Article 32

(1) If the seller, in accordance with the contract or this Convention, hands the goods over to a carrier and if the goods are not clearly identified to the contract by markings on the goods, by shipping documents or otherwise, the seller must give the buyer notice of the consignment specifying the goods.

(2) If the seller is bound to arrange for carriage of the goods, he must make such contracts as are necessary for carriage to the place fixed by means of transportation appropriate in the circumstances and according to the usual terms for such transportation.

(3) If the seller is not bound to effect insurance in respect of the carriage of the goods, he must, at the buyer's request, provide him with all available information necessary to enable him to effect such insurance.

Article 33

The seller must deliver the goods:

(a) If a date is fixed by or determinable from the contract, on that date;

(b) If a period of time is fixed by or determinable from the contract, at any time within that period unless circumstances indicate that the buyer is to choose a date; or

(c) In any other case, within a reasonable time after the conclusion of the contract.

Article 34

If the seller is bound to hand over documents relating to the goods, he must hand them over at the time and place and in the form required by the contract. If the seller has handed over documents before that time, he may, up to that time, cure any lack of conformity in the documents, if the exercise of this right does not cause the buyer unreasonable inconvenience or unreasonable expense. However, the buyer retains any right to claim damages as provided for in this Convention.

Section II. Conformity of the Goods and Third Party Claims

Article 35

(1) The seller must deliver goods which are of the quantity, quality and description required by the contract and which are contained or packaged in the manner required by the contract.

(2) Except where the parties have agreed otherwise, the goods do not conform with the contract unless they:

(a) Are fit for the purposes for which goods of the same description would ordinarily be used;

(b) Are fit for any particular purpose expressly or impliedly made known to the seller at the time of the conclusion of the contract, ex-

cept where the circumstances show that the buyer did not rely, or that it was unreasonable for him to rely, on the seller's skill and judgement;

(c) Possess the qualities of goods which the seller has held out to the buyer as a sample or model;

(d) Are contained or packaged in the manner usual for such goods or, where there is no such manner, in a manner adequate to preserve and protect the goods.

(3) The seller is not liable under subparagraphs (a) to (d) of the preceding paragraph for any lack of conformity of the goods if at the time of the conclusion of the contract the buyer knew or could not have been unaware of such lack of conformity.

Article 36

(1) The seller is liable in accordance with the contract and this Convention for any lack of conformity which exists at the time when the risk passes to the buyer, even though the lack of conformity becomes apparent only after that time.

(2) The seller is also liable for any lack of conformity which occurs after the time indicated in the preceding paragraph and which is due to a breach of any of his obligations, including a breach of any guarantee that for a period of time the goods will remain fit for their ordinary purpose or for some particular purpose or will retain specified qualities or characteristics.

Article 37

If the seller has delivered goods before the date for delivery, he may, up to that date, deliver any missing part or make up any deficiency in the quantity of the goods delivered, or deliver goods in replacement of any non-conforming goods delivered or remedy any lack of conformity in the goods delivered, provided that the exercise of this right does not cause the buyer unreasonable inconvenience or unreasonable expense. However, the buyer retains any right to claim damages as provided for in this Convention.

Article 38

(1) The buyer must examine the goods, or cause them to be examined, within as short a period as is practicable in the circumstances.

(2) If the contract involves carriage of the goods, examination may be deferred until after the goods have arrived at their destination.

(3) If the goods are redirected in transit or redispatched by the buyer without a reasonable opportunity for examination by him and at the time of the conclusion of the contract the seller knew or ought to have known of the possibility of such redirection or redispatch, examination may be deferred until after the goods have arrived at the new destination.

Article 39

(1) The buyer loses the right to rely on a lack of conformity of the goods if he does not give notice to the seller specifying the nature of the lack of conformity within a reasonable time after he has discovered it or ought to have discovered it.

(2) In any event, the buyer loses the right to rely on a lack of conformity of the goods if he does not give the seller notice thereof at

the latest within a period of two years from the date on which the goods were actually handed over to the buyer, unless this time-limit is inconsistent with a contractual period of guarantee.

Article 40

The seller is not entitled to rely on the provisions of articles 38 and 39 if the lack of conformity relates to facts of which he knew or could not have been unaware and which he did not disclose to the buyer.

Article 41

The seller must deliver goods which are free from any right or claim of a third party, unless the buyer agreed to take the goods subject to that right or claim. However, if such right or claim is based on industrial property or other intellectual property, the seller's obligation is governed by article 42.

Article 42

(1) The seller must deliver goods which are free from any right or claim of a third party based on industrial property or other intellectual property, of which at the time of the conclusion of the contract the seller knew or could not have been unaware, provided that the right or claim is based on industrial property or other intellectual property:

(a) Under the law of the State where the goods will be resold or otherwise used, if it was contemplated by the parties at the time of the conclusion of the contract that the goods would be resold or otherwise used in that State; or

(b) In any other case, under the law of the State where the buyer has his place of business.

(2) The obligation of the seller under the preceding paragraph does not extend to cases where:

(a) At the time of the conclusion of the contract the buyer knew or could not have been unaware of the right or claim; or

(b) The right or claim results from the seller's compliance with technical drawings, designs, formulae or other such specifications furnished by the buyer.

Article 43

(1) The buyer loses the right to rely on the provisions of article 41 or article 42 if he does not give notice to the seller specifying the nature of the right or claim of the third party within a reasonable time after he has become aware or ought to have become aware of the right or claim.

(2) The seller is not entitled to rely on the provisions of the preceding paragraph if he knew of the right or claim of the third party and the nature of it.

Article 44

Notwithstanding the provisions of paragraph (1) of article 39 and paragraph (1) of article 43, the buyer may reduce the price in accordance with article 50 or claim damages, except for loss of profit, if he has a reasonable excuse for his failure to give the required notice.

Section III. Remedies for Breach of Contract by the Seller

Article 45

(1) If the seller fails to perform any of his obligations under the contract or this Convention, the buyer may:

(a) Exercise the rights provided in articles 46 to 52;

(b) Claim damages as provided in articles 74 to 77.

(2) The buyer is not deprived of any right he may have to claim damages by exercising his right to other remedies.

(3) No period of grace may be granted to the seller by a court or arbitral tribunal when the buyer resorts to a remedy for breach of contract.

Article 46

(1) The buyer may require performance by the seller of his obligations unless the buyer has resorted to a remedy which is inconsistent with this requirement.

(2) If the goods do not conform with the contract, the buyer may require delivery of substitute goods only if the lack of conformity constitutes a fundamental breach of contract and a request for substitute goods is made either in conjunction with notice given under article 39 or within a reasonable time thereafter.

(3) If the goods do not conform with the contract, the buyer may require the seller to remedy the lack of conformity by repair, unless this is unreasonable having regard to all the circumstances. A request for repair must be made either in conjunction with notice given under article 39 or within a reasonable time thereafter.

Article 47

(1) The buyer may fix an additional period of time of reasonable length for performance by the seller of his obligations.

(2) Unless the buyer has received notice from the seller that he will not perform within the period so fixed, the buyer may not, during that period, resort to any remedy for breach of contract. However, the buyer is not deprived thereby of any right he may have to claim damages for delay in performance.

Article 48

(1) Subject to article 49, the seller may, even after the date for delivery, remedy at his own expense any failure to perform his obligations, if he can do so without unreasonable delay and without causing the buyer unreasonable inconvenience or uncertainty of reimbursement by the seller of expenses advanced by the buyer. However, the buyer retains any right to claim damages as provided for in this Convention.

(2) If the seller requests the buyer to make known whether he will accept performance and the buyer does not comply with the request within a reasonable time, the seller may perform within the time indicated in his request. The buyer may not, during that period of time, resort to any remedy which is inconsistent with performance by the seller.

(3) A notice by the seller that he will perform within a specified period of time is assumed to include a request, under the preceding paragraph, that the buyer make known his decision.

(4) A request or notice by the seller under paragraph (2) or (3) of this article is not effective unless received by the buyer.

Article 49

(1) The buyer may declare the contract avoided:

(a) If the failure by the seller to perform any of his obligations under the contract or this Convention amounts to a fundamental breach of contract; or

(b) In case of non-delivery, if the seller does not deliver the goods within the additional period of time fixed by the buyer in accordance with paragraph (1) of article 47 or declares that he will not deliver within the period so fixed.

(2) However, in cases where the seller has delivered the goods, the buyer loses the right to declare the contract avoided unless he does so:

(a) In respect of late delivery, within a reasonable time after he has become aware that delivery has been made;

(b) In respect of any breach other than late delivery, within a reasonable time:

(i) After he knew or ought to have known of the breach;

(ii) After the expiration of any additional period of time fixed by the buyer in accordance with paragraph (1) of article 47, or after the seller has declared that he will not perform his obligations within such an additional period; or

(iii) After the expiration of any additional period of time indicated by the seller in accordance with paragraph (2) of article 48, or after the buyer has declared that he will not accept performance.

Article 50

If the goods do not conform with the contract and whether or not the price has already been paid, the buyer may reduce the price in the same proportion as the value that the goods actually delivered had at the time of the delivery bears to the value that conforming goods would have had at that time. However, if the seller remedies any failure to perform his obligations in accordance with article 37 or article 48 or if the buyer refuses to accept performance by the seller in accordance with those articles, the buyer may not reduce the price.

Article 51

(1) If the seller delivers only a part of the goods or if only a part of the goods delivered is in conformity with the contract, articles 46 to 50 apply in respect of the part which is missing or which does not conform.

(2) The buyer may declare the contract avoided in its entirety only if the failure to make delivery completely or in conformity with the contract amounts to a fundamental breach of the contract.

Article 52

(1) If the seller delivers the goods before the date fixed, the buyer may take delivery or refuse to take delivery.

(2) If the seller delivers a quantity of goods greater than that provided for in the contract, the buyer may take delivery or refuse to take

delivery of the excess quantity. If the buyer takes delivery of all or part or the excess quantity, he must pay for it at the contract rate.

CHAPTER III—OBLIGATIONS OF THE BUYER

Article 53

The buyer must pay the price for the goods and take delivery of them as required by the contract and this Convention.

Section I. Payment of the Price

Article 54

The buyer's obligation to pay the price includes taking such steps and complying with such formalities as may be required under the contract or any laws and regulations to enable payment to be made.

Article 55

Where a contract has been validly concluded but does not expressly or implicitly fix or make provision for determining the price, the parties are considered, in the absence of any indication to the contrary, to have impliedly made reference to the price generally charged at the time of the conclusion of the contract for such goods sold under comparable circumstances in the trade concerned.

Article 56

If the price is fixed according to the weight of the goods, in case of doubt it is to be determined by the net weight.

Article 57

(1) If the buyer is not bound to pay the price at any other particular place, he must pay it to the seller:

(a) At the seller's place of business; or

(b) If the payment is to be made against the handing over of the goods or of documents, at the place where the handing over takes place.

(2) The seller must bear any increase in the expenses incidental to payment which is caused by a change in his place of business subsequent to the conclusion of the contract.

Article 58

(1) If the buyer is not bound to pay the price at any other specific time, he must pay it when the seller places either the goods or documents controlling their disposition at the buyer's disposal in accordance with the contract and this Convention. The seller may make such payment a condition for handing over the goods or documents.

(2) If the contract involves carriage of the goods, the seller may dispatch the goods on terms whereby the goods, or documents controlling their disposition, will not be handed over to the buyer except against payment of the price.

(3) The buyer is not bound to pay the price until he has had an opportunity to examine the goods, unless the procedures for delivery or payment agreed upon by the parties are inconsistent with his having such an opportunity.

Article 59

The buyer must pay the price on the date fixed by or determinable from the contract and this Convention without the need for any request or compliance with any formality on the part of the seller.

Section II. Taking Delivery

Article 60

The buyer's obligation to take delivery consists:

(a) In doing all the acts which could reasonably be expected of him in order to enable the seller to make delivery; and

(b) In taking over the goods.

Section III. Remedies for Breach of Contract by the Buyer

Article 61

(1) If the buyer fails to perform any of his obligations under the contract or this Convention, the seller may:

(a) Exercise the rights provided in articles 62 to 65;

(b) Claim damages as provided in articles 74 to 77.

(2) The seller is not deprived of any right he may have to claim damages by exercising his right to other remedies.

(3) No period of grace may be granted to the buyer by a court or arbitral tribunal when the seller resorts to a remedy for breach of contract.

Article 62

The seller may require the buyer to pay the price, take delivery or perform his other obligations, unless the seller has resorted to a remedy which is inconsistent with this requirement.

Article 63

(1) The seller may fix an additional period of time of reasonable length for performance by the buyer of his obligations.

(2) Unless the seller has received notice from the buyer that he will not perform within the period so fixed, the seller may not, during that period, resort to any remedy for breach of contract. However, the seller is not deprived thereby of any right he may have to claim damages for delay in performance.

Article 64

(1) The seller may declare the contract avoided:

(a) If the failure by the buyer to perform any of his obligations under the contract or this Convention amounts to a fundamental breach of contract; or

(b) If the buyer does not, within the additional period of time fixed by the seller in accordance with paragraph (1) of article 63, perform his obligation to pay the price or take delivery of the goods, or if he declares that he will not do so within the period so fixed.

(2) However, in cases where the buyer has paid the price, the seller loses the right to declare the contract avoided unless he does so:

(a) In respect of late performance by the buyer, before the seller has become aware that performance has been rendered; or

(b) In respect of any breach other than late performance by the buyer, within a reasonable time:

(i) After the seller knew or ought to have known of the breach; or

(ii) After the expiration of any additional period of time fixed by the seller in accordance with paragraph (1) of article 63, or after the buyer has declared that he will not perform his obligations within such an additional period.

Article 65

(1) If under the contract the buyer is to specify the form, measurement or other features of the goods and he fails to make such specification either on the date agreed upon or within a reasonable time after receipt of a request from the seller, the seller may, without prejudice to any other rights he may have, make the specification himself in accordance with the requirements of the buyer that may be known to him.

(2) If the seller makes the specification himself, he must inform the buyer of the details thereof and must fix a reasonable time within which the buyer may make a different specification. If, after receipt of such a communication, the buyer fails to do so within the time so fixed, the specification made by the seller is binding.

CHAPTER IV—PASSING OF RISK

Article 66

Loss of or damage to the goods after the risk has passed to the buyer does not discharge him from his obligation to pay the price, unless the loss or damage is due to an act or omission of the seller.

Article 67

(1) If the contract of sale involves carriage of the goods and the seller is not bound to hand them over at a particular place, the risk passes to the buyer when the goods are handed over to the first carrier for transmission to the buyer in accordance with the contract of sale. If the seller is bound to hand the goods over to a carrier at a particular place, the risk does not pass to the buyer until the goods are handed over to the carrier at that place. The fact that the seller is authorized to retain documents controlling the disposition of the goods does not affect the passage of the risk.

(2) Nevertheless, the risk does not pass to the buyer until the goods are clearly identified to the contract, whether by markings on the goods, by shipping documents, by notice given to the buyer or otherwise.

Article 68

The risk in respect of goods sold in transit passes to the buyer from the time of the conclusion of the contract. However, if the circumstances so indicate, the risk is assumed by the buyer from the time the goods were handed over to the carrier who issued the documents embodying the contract of carriage. Nevertheless, if at the time of the conclusion of the contract of sale the seller knew or ought to have known that the goods had been lost or damaged and did not disclose this to the buyer, the loss or damage is at the risk of the seller.

Article 69

(1) In cases not within articles 67 and 68, the risk passes to the buyer when he takes over the goods or, if he does not do so in due time, from the time when the goods are placed at his disposal and he commits a breach of contract by failing to take delivery.

(2) However, if the buyer is bound to take over the goods at a place other than a place of business of the seller, the risk passes when delivery is due and the buyer is aware of the fact that the goods are placed at his disposal at that place.

(3) If the contract relates to goods not then identified, the goods are considered not to be placed at the disposal of the buyer until they are clearly identified to the contract.

Article 70

If the seller has committed a fundamental breach of contract, articles 67, 68 and 69 do not impair the remedies available to the buyer on account of the breach.

CHAPTER V—PROVISIONS COMMON TO THE OBLIGATIONS OF THE SELLER AND OF THE BUYER

Section I. Anticipatory Breach and Instalment Contracts

Article 71

(1) A party may suspend the performance of his obligations if, after the conclusion of the contract, it becomes apparent that the other party will not perform a substantial part of his obligations as a result of:

(a) A serious deficiency in his ability to perform or in his creditworthiness; or

(b) His conduct in preparing to perform or in performing the contract.

(2) If the seller has already dispatched the goods before the grounds described in the preceding paragraph become evident, he may prevent the handing over of the goods to the buyer even though the buyer holds a document which entitles him to obtain them. The present paragraph relates only to the rights in the goods as between the buyer and the seller.

(3) A party suspending performance, whether before or after dispatch of the goods, must immediately give notice of the suspension to the other party and must continue with performance if the other party provides adequate assurance of his performance.

Article 72

(1) If prior to the date for performance of the contract it is clear that one of the parties will commit a fundamental breach of contract, the other party may declare the contract avoided.

(2) If time allows, the party intending to declare the contract avoided must give reasonable notice to the other party in order to permit him to provide adequate assurance of his performance.

(3) The requirements of the preceding paragraph do not apply if the other party has declared that he will not perform his obligations.

Article 73

(1) In the case of a contract for delivery of goods by instalments, if the failure of one party to perform any of his obligations in respect of any instalment constitutes a fundamental breach of contract with respect to that instalment, the other party may declare the contract avoided with respect to that instalment.

(2) If one party's failure to perform any of his obligations in respect of any instalment gives the other party good grounds to conclude that a fundamental breach of contract will occur with respect

to future instalments, he may declare the contract avoided for the future, provided that he does so within a reasonable time.

(3) A buyer who declares the contract avoided in respect of any delivery may, at the same time, declare it avoided in respect of deliveries already made or of future deliveries if, by reason of their interdependence, those deliveries could not be used for the purpose contemplated by the parties at the time of the conclusion of the contract.

Section II. Damages

Article 74

Damages for breach of contract by one party consist of a sum equal to the loss, including loss of profit, suffered by the other party as a consequence of the breach. Such damages may not exceed the loss which the party in breach foresaw or ought to have foreseen at the time of the conclusion of the contract, in the light of the facts and matters of which he then knew or ought to have known, as a possible consequence of the breach of contract.

Article 75

If the contract is avoided and if, in a reasonable manner and within a reasonable time after avoidance, the buyer has bought goods in replacement or the seller has resold the goods, the party claiming damages may recover the difference between the contract price and the price in the substitute transaction as well as any further damages recoverable under article 74.

Article 76

(1) If the contract is avoided and there is a current price for the goods, the party claiming damages may, if he has not made a purchase or resale under article 75, recover the difference between the price fixed by the contract and the current price at the time of avoidance as well as any further damages recoverable under article 74. If, however, the party claiming damages has avoided the contract after taking over the goods, the current price at the time of such taking over shall be applied instead of the current price at the time of avoidance.

(2) For the purposes of the preceding paragraph, the current price is the price prevailing at the place where delivery of the goods should have been made or, if there is no current price at that place, the price at such other place as serves as a reasonable substitute, making due allowance for differences in the cost of transporting the goods.

Article 77

A party who relies on a breach of contract must take such measures as are reasonable in the circumstances to mitigate the loss, including loss of profit, resulting from the breach. If he fails to take such measures, the party in breach may claim a reduction in the damages in the amount by which the loss should have been mitigated.

Section III. Interest

Article 78

If a party fails to pay the price or any other sum that is in arrears, the other party is entitled to interest on it, without prejudice to any claim for damages recoverable under article 74.

Section IV. Exemptions

Article 79

(1) A party is not liable for a failure to perform any of his obligations if he proves that the failure was due to an impediment beyond his control and that he could not reasonably be expected to have taken the impediment into account at the time of the conclusion of the contract or to have avoided or overcome it, or its consequences.

(2) If the party's failure is due to the failure by a third person whom he has engaged to perform the whole or a part of the contract, that party is exempt from liability only if:

(a) He is exempt under the preceding paragraph; and

(b) The person whom he has so engaged would be so exempt if the provisions of that paragraph were applied to him.

(3) The exemption provided by this article has effect for the period during which the impediment exists.

(4) The party who fails to perform must give notice to the other party of the impediment and its effect on his ability to perform. If the notice is not received by the other party within a reasonable time after the party who fails to perform knew or ought to have known of the impediment, he is liable for damages resulting from such non-receipt.

(5) Nothing in this article prevents either party from exercising any right other than to claim damages under this Convention.

Article 80

A party may not rely on a failure of the other party to perform, to the extent that such failure was caused by the first party's act or omission.

Section V. Effects of Avoidance

Article 81

(1) Avoidance of the contract releases both parties from their obligations under it, subject to any damages which may be due. Avoidance does not affect any provision of the contract for the settlement of disputes or any other provision of the contract governing the rights and obligations of the parties consequent upon the avoidance of the contract.

(2) A party who has performed the contract either wholly or in part may claim restitution from the other party of whatever the first party has supplied or paid under the contract. If both parties are bound to make restitution, they must do so concurrently.

Article 82

(1) The buyer loses the right to declare the contract avoided or to require the seller to deliver substitute goods if it is impossible for him to make restitution of the goods substantially in the condition in which he received them.

(2) The preceding paragraph does not apply:

(a) If the impossibility of making restitution of the goods or of making restitution of the goods substantially in the condition in which the buyer received them is not due to his act or omission;

(b) If the goods or part of the goods have perished or deteriorated as a result of the examination provided for in article 38; or

(c) If the goods or part of the goods have been sold in the normal course of business or have been consumed or transformed by the buyer

in the course of normal use before he discovered or ought to have discovered the lack of conformity.

Article 83

A buyer who has lost the right to declare the contract avoided or to require the seller to deliver substitute goods in accordance with article 82 retains all other remedies under the contract and this Convention.

Article 84

(1) If the seller is bound to refund the price, he must also pay interest on it, from the date on which the price was paid.

(2) The buyer must account to the seller for all benefits which he has derived from the goods or part of them:

(a) If he must make restitution of the goods or part of them; or

(b) If it is impossible for him to make restitution of all or part of the goods or to make restitution of all or part of the goods substantially in the condition in which he received them, but he has nevertheless declared the contract avoided or required the seller to deliver substitute goods.

Section VI. Preservation of the Goods

Article 85

If the buyer is in delay in taking delivery of the goods or, where payment of the price and delivery of the goods are to be made concurrently, if he fails to pay the price, and the seller is either in possession of the goods or otherwise able to control their disposition, the seller must take such steps as are reasonable in the circumstances to preserve them. He is entitled to retain them until he has been reimbursed his reasonable expenses by the buyer.

Article 86

(1) If the buyer has received the goods and intends to exercise any right under the contract or this Convention to reject them, he must take such steps to preserve them as are reasonable in the circumstances. He is entitled to retain them until he has been reimbursed his reasonable expenses by the seller.

(2) If goods dispatched to the buyer have been placed at his disposal at their destination and he exercises the right to reject them, he must take possession of them on behalf of the seller, provided that this can be done without payment of the price and without unreasonable inconvenience or unreasonable expense. This provision does not apply if the seller or a person authorized to take charge of the goods on his behalf is present at the destination. If the buyer takes possession of the goods under this paragraph, his rights and obligations are governed by the preceding paragraph.

Article 87

A party who is bound to take steps to preserve the goods may deposit them in a warehouse of a third person at the expense of the other party provided that the expense incurred is not unreasonable.

Article 88

(1) A party who is bound to preserve the goods in accordance with article 85 or 86 may sell them by any appropriate means if there has

been an unreasonable delay by the other party in taking possession of the goods or in taking them back or in paying the price or the cost of preservation, provided that reasonable notice of the intention to sell has been given to the other party.

(2) If the goods are subject to rapid deterioration or their preservation would involve unreasonable expense, a party who is bound to preserve the goods in accordance with article 85 or 86 must take reasonable measures to sell them. To the extent possible he must give notice to the other party of his intention to sell.

(3) A party selling the goods has the right to retain out of the proceeds of sale an amount equal to the reasonable expenses of preserving the goods and of selling them. He must account to the other party for the balance.

Part IV—Final Provisions

Article 89

The Secretary-General of the United Nations is hereby designated as the depositary for this Convention.

Article 90

This Convention does not prevail over any international agreement which has already been or may be entered into and which contains provisions concerning the matters governed by this Convention, provided that the parties have their places of business in States parties to such agreement.

Article 91

(1) This Convention is open for signature at the concluding meeting of the United Nations Conference on Contracts for the International Sale of Goods and will remain open for signature by all States at the Headquarters of the United Nations, New York until 30 September 1981.

(2) This Convention is subject to ratification, acceptance or approval by the signatory States.

(3) This Convention is open for accession by all States which are not signatory States as from the date it is open for signature.

(4) Instruments of ratification, acceptance, approval and accession are to be deposited with the Secretary-General of the United Nations.

Article 92

(1) A Contracting State may declare at the time of signature, ratification, acceptance, approval or accession that it will not be bound by Part II of this Convention or that it will not be bound by Part III of this Convention.

(2) A Contracting State which makes a declaration in accordance with the preceding paragraph in respect of Part II or Part III of this Convention is not to be considered a Contracting State within paragraph (1) of article 1 of this Convention in respect of matters governed by the Part to which the declaration applies.

Article 93

(1) If a Contracting State has two or more territorial units in which, according to its constitution, different systems of law are applicable in relation to the matters dealt with in this Convention, it may,

at the time of signature, ratification, acceptance, approval or accession, declare that this Convention is to extend to all its territorial units or only to one or more of them, and may amend its declaration by submitting another declaration at any time.

(2) These declarations are to be notified to the depositary and are to state expressly the territorial units to which the Convention extends.

(3) If, by virtue of a declaration under this article, this Convention extends to one or more but not all of the territorial units of a Contracting State, and if the place of business of a party is located in that State, this place of business, for the purposes of this Convention, is considered not to be in a Contracting State, unless it is in a territorial unit to which the Convention extends.

(4) If a Contracting State makes no declaration under paragraph (1) of this article, the Convention is to extend to all territorial units of that State.

Article 94

(1) Two or more Contracting States which may have the same or closely related legal rules on matters governed by this Convention may at any time declare that the Convention is not to apply to contracts of sale or to their formation where the parties have their places of business in those States. Such declarations may be made jointly or by reciprocal unilateral declarations.

(2) A Contracting State which has the same or closely related legal rules on matters governed by this Convention as one or more non-Contracting States may at any time declare that the Convention is not to apply to contracts of sale or to their formation where the parties have their places of business in those States.

(3) If a State which is the object of a declaration under the preceding paragraph subsequently becomes a Contracting State, the declaration made will, as from the date on which the Convention enters into force in respect of the new Contracting State, have the effect of a declaration made under paragraph (1), provided that the new Contracting State joins in such declaration or makes a reciprocal unilateral declaration.

Article 95

Any State may declare at the time of the deposit of its instrument of ratification, acceptance, approval or accession that it will not be bound by subparagraph (1) (b) of article 1 of this Convention.

Article 96

A Contracting State whose legislation requires contracts of sale to be concluded in or evidenced by writing may at any time make a declaration in accordance with article 12 that any provision of article 11, article 29, or Part II of this Convention, that allows a contract of sale or its modification or termination by agreement or any offer, acceptance, or other indication of intention to be made in any form other than in writing, does not apply where any party has his place of business in that State.

Article 97

(1) Declarations made under this Convention at the time of signature are subject to confirmation upon ratification, acceptance or approval.

(2) Declarations and confirmations of declarations are to be in writing and be formally notified to the depositary.

(3) A declaration takes effect simultaneously with the entry into force of this Convention in respect of the State concerned. However, a declaration of which the depositary receives formal notification after such entry into force takes effect on the first day of the month following the expiration of six months after the date of its receipt by the depositary. Reciprocal unilateral declarations under article 94 take effect on the first day of the month following the expiration of six months after the receipt of the latest declaration by the depositary.

(4) Any State which makes a declaration under this Convention may withdraw it at any time by a formal notification in writing addressed to the depositary. Such withdrawal is to take effect on the first day of the month following the expiration of six months after the date of the receipt of the notification by the depositary.

(5) A withdrawal of a declaration made under article 94 renders inoperative, as from the date on which the withdrawal takes effect, any reciprocal declaration made by another State under that article.

Article 98

No reservations are permitted except those expressly authorized in this Convention.

Article 99

(1) This Convention enters into force, subject to the provisions of paragraph (6) of this article, on the first day of the month following the expiration of twelve months after the date of deposit of the tenth instrument of ratification, acceptance, approval or accession, including an instrument which contains a declaration made under article 92.

(2) When a State ratifies, accepts, approves or accedes to this Convention after the deposit of the tenth instrument of ratification, acceptance, approval or accession, this Convention, with the exception of the Part excluded, enters into force in respect of that State, subject to the provisions of paragraph (6) of this article, on the first day of the month following the expiration of twelve months after the date of the deposit of its instrument of ratification, acceptance, approval or accession.

(3) A State which ratifies, accepts, approves or accedes to this Convention and is a party to either or both the Convention relating to a Uniform Law on the Formation of Contracts for the International Sale of Goods done at The Hague on 1 July 1964 (1964 Hague Formation Convention) and the Convention relating to a Uniform Law on the International Sale of Goods done at The Hague on 1 July 1964 (1964 Hague Sales Convention) shall at the same time denounce, as the case may be, either or both the 1964 Hague Sales Convention and the 1964 Hague Formation Convention by notifying the Government of the Netherlands to that effect.

(4) A State party to the 1964 Hague Sales Convention which ratifies, accepts, approves or accedes to the present Convention and declares or has declared under article 92 that it will not be bound by Part II of this Convention shall at the time of ratification, acceptance, approval or accession denounce the 1964 Hague Sales Convention by notifying the Government of the Netherlands to that effect.

(5) A State party to the 1964 Hague Formation Convention which ratifies, accepts, approves or accedes to the present Convention and declares or has declared under article 92 that it will not be bound by Part III of this Convention shall at the time of ratification, acceptance, approval or accession denounce the 1964 Hague Formation Convention by notifying the Government of the Netherlands to that effect.

(6) For the purpose of this article, ratifications, acceptances, approvals and accessions in respect of this Convention by States parties to the 1964 Hague Formation Convention or to the 1964 Hague Sales Convention shall not be effective until such denunciations as may be required on the part of those States in respect of the latter two Conventions have themselves become effective. The depositary of this Convention shall consult with the Government of the Netherlands, as the depositary of the 1964 Conventions, so as to ensure necessary co-ordination in this respect.

Article 100

(1) This Convention applies to the formation of a contract only when the proposal for concluding the contract is made on or after the date when the Convention enters into force in respect of the Contracting States referred to in subparagraph (1) (a) or the Contracting State referred to in subparagraph (1) (b) of article 1.

(2) This Convention applies only to contracts concluded on or after the date when the Convention enters into force in respect of the Contracting States referred to in subparagraph (1) (a) or the Contracting State referred to in subparagraph (1) (b) of article 1.

Article 101

(1) A Contracting State may denounce this Convention, or Part II or Part III of the Convention, by a formal notification in writing addressed to the depositary.

(2) The denunciation takes effect on the first day of the month following the expiration of twelve months after the notification is received by the depositary. Where a longer period for the denunciation to take effect is specified in the notification, the denunciation takes effect upon the expiration of such longer period after the notification is received by the depositary.

Done at Vienna, this eleventh day of April, one thousand nine hundred and eighty, in a single original, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic.

In witness whereof the undersigned plenipotentiaries, being duly authorized by their respective Governments, have signed this Convention.

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